IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jagdish & ors. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 360/2003 against the order dated 26-3-2003 passed by the Additional Sessions Judge No.2, Sri Ganganagar, in Criminal Revision No.61/2002.

...

Date of Order: September 13, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.R. Vyas, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the contesting non-petitioners.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners, who are the legal representatives of deceased Jamna Devi, original party No.2 in the proceedings under Section 145 of the Code, have challenged the order dated 26-3-2003 passed by the Additional Sessions Judge No.2, Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 61/2002, whereby the revision petition filed by the petitioners against the order dated 14-3-2001 passed by the Sub-Divisional Magistrate, Sri

Ganganagar (for short, "the Executive Magistrate" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. No one appears for the contesting non-petitioners though served. I have carefully gone through the orders passed by the Executive Magistrate as well as the Revisional Court.

On a complaint filed by the Station House Officer, Police Station, Chunawad under Sections 145 and 146 of the Code on 29-9-1988, the proceedings under Sections 145 and 146 of the Code were initiated. Both the parties appeared and filed their written statements. The land in question was attached by the Executive Magistrate and the Naib Tehsildar was appointed as the Receiver. The Receiver took possession of the land in dispute. During pendency of the proceedings, party No.2 Jamna Devi expired on 5-12-1989 and her legal representatives, who are present petitioners Jagdish and others, filed an application under sub-section (7) of Section 145 of the Code claiming themselves to be the legal representatives of deceased Jamna Devi and to be made party to the proceedings. The said application was allowed by the Executive Magistrate and they were made party to the proceedings as the legal representatives of deceased Jamna Devi, party No.2. The order of attachment came to be challenged before this Court by way of filing S.B.

Criminal Miscellaneous Petition No. 462/1995 by Thakar Ram, party No.1, and by the order dated 24-8-1995, the order of attachment and appointment of receiver was set aside. During pendency of the case, party No.1 Thakar Ram also expired and his widow, son and daughters were made party to the proceedings as Party No.1. The Executive Magistrate held an inquiry as contemplated under sub-section (4) of Section 145 of the Code and recorded the statements of witnesses. For party No.2, Mahendra Singh S/o late Thakar Ram appeared as a witness and one witness Krishna Lal was produced, which is evident from the order passed by the Executive Magistrate. From the order of the Executive Magistrate, it appears that the parties led their evidence. The Executive Magistrate, instead of deciding the matter declaring either of the parties in possession or to hold that he is unable to satisfy himself as to which of the parties was then in possession of the subject matter of the dispute, straight way dropped the proceedings on the ground that after initiation of the proceedings, no untoward incident took place. That order came to be challenged before the Revisional Court. The Revisional Court also did not interfere with the order of the Executive Magistrate.

It appears that neither the Executive Magistrate nor the Revisional Court has considered the provisions of sub-section (4) and (6) (a) of Section 145 of the Code in right perspective.

Sub-section (1) of Section 145 of the Code provides that whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Sub-section (4) of Section 145 of the Code provides that the Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute, provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so

dispossessed as if that party had been in possession on the date of his order under sub-section (1). Sub-section 6 (a) of Section 145 of the Code provides that if the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in the due course of law, and forbidding all disturbance of such possession until such eviction, and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

These provisions clearly provides the procedure after initiation of proceedings under Section 145 (1) of the Code. In the instant case, it appears that on the complaint filed by the Station House Officer, the preliminary order was drawn under sub-section (1) of Section 145 of the Code; the parties filed their written statements and their respective claim in respect of the subject of dispute. The parties led the evidence as envisaged in sub-section (4) of Section 145 and thereafter it was for the Executive Magistrate to decide the matter according to the provisions of sub-section 6 (a) of Section 145 of the Code. In the instant case, instead of deciding the matter as envisaged under sub-section 6 (a) of Section 145 of the Code, the Executive Magistrate has dropped the proceedings only on the

ground that after initiation of the proceedings, there was no untoward incident. There is no provision under Section 145 of the Code except the provision under sub-section (5) of Section 145 which provides that nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

In the instant case, neither the parties to the proceedings, nor any other person interested, has shown that no such dispute, as aforesaid, exists or has existed. Without there being any such material to show that no such dispute exists or has existed, the Executive Magistrate dropped the proceedings, which cannot be said to have fulfilled the requirements of Section 145 of the Code and, therefore, in my view, the Executive Magistrate fell in error in dropping the proceedings; so also the Revisional Court failed to consider the provisions of sub-sections (4) and 6 (a) of Section 145 of the Code in right perspective. In the circumstances, therefore, the order impugned deserves to be set aside.

In the result, the criminal miscellaneous petition is allowed. The order dated 14-3-2001 passed by the Executive

Magistrate and the order dated 26-3-2003 passed by the Revisional Court affirming the order of the Executive Magistrate dated 14-3-2001, are set aside. The matter is remanded to the Executive Magistrate to decide the matter in accordance with the provisions of law. The stay petition stands disposed of.

(H.R. PANWAR), J.

mcs